

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

CHRISTOPHER FAIN; ZACHARY MARTELL; and BRIAN MCNEMAR, individually and on behalf of all others similarly situated,

*Plaintiffs,*

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; CYNTHIA BEANE, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES; TED CHEATHAM, in his official Capacity as Director of the West Virginia Public Employees Insurance Agency; and THE HEALTH PLAN OF WEST VIRGINIA, INC.

*Defendants.*

CIVIL ACTION NO. 3:20-cv-00740  
HON. ROBERT C. CHAMBERS

**CONSENT MOTION TO EXTEND TIME FOR  
RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS**

Plaintiffs Christopher Fain, Zachary Martell, and Brian McNemar (“Plaintiffs”), by and through their counsel, respectfully move the Court for an extension of time related to Defendants’ Motions to Dismiss. Plaintiffs request that their current deadline to oppose Defendants’ motions of January 25, 2021 be extended until February 15, 2021. All Defendants consent to the relief sought in this motion.

In support, Plaintiffs state:

1. Plaintiffs filed their Complaint on November 12, 2020. (ECF No. 1).
2. At Defendants' request, Plaintiffs stipulated to approximately 30 additional days for each Defendant to answer or otherwise plead pursuant to Federal Rule of Civil Procedure 12. These stipulations were filed by Defendant Ted Cheatham on December 2, 2020 (ECF No. 16); Defendant The Health Plan of West Virginia, Inc. on December 7, 2020 (ECF No. 18); and Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources on December 19, 2020 (ECF No. 19). All Defendants filed motions to dismiss on January 11, 2021. (ECF Nos. 20, 22, 23).
3. Defendants filed three separate motions to dismiss Plaintiffs' claims, spanning 50 pages of briefing. (*See* ECF Nos. 21, 24, 25).
4. Each motion to dismiss advances several arguments for dismissal of Plaintiffs' four counts. (*See* ECF Nos. 21, 24, 25).
5. Pursuant to Local Rule of Civil Procedure 7.1(a)(7), Plaintiffs' responses in opposition to Defendants' motions are due "[w]ithin 14 days of the date of service of the motion," which Plaintiffs calculate to fall on Monday, January 25, 2021.
6. Good cause exists to extend Plaintiffs' deadline to oppose Defendants' motions. Given the number of motions and the breadth of the arguments to which Plaintiffs will respond, Plaintiffs' counsel requires limited additional time to fully review and properly respond to Defendants' three motions.
7. In light of all Defendants' consent to the relief requested, this extension will not prejudice any party. Nor will the extension delay the administration of the case, since it will not interfere with any of the deadlines in the Court's Order and Notice setting deadlines for the case

scheduling conference and initial disclosures under Federal Rule of Civil Procedure 26. (ECF No. 27).

## CONCLUSION

Accordingly, Plaintiffs respectfully request an extension of the 14-day deadline by an additional 21 days, so that Plaintiffs' responses in opposition to Defendants' motions to dismiss are due on February 15, 2021.

Dated: January 20, 2021

Respectfully submitted,

s/ Walt Auvil

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